

**BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO**

In the Matter of the Protest of	)	
	)	DOCKET NO. 19576
[REDACTED]	)	
Petitioner.	)	DECISION
	)	
	)	

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On July 18, 2006, the Sales and Use Tax Audit Bureau of the Idaho State Commission issued a Notice of Deficiency Determination to [Redacted] (taxpayer) asserting [Redacted] permit fees and penalty totaling \$425 for the period of July 1, 2006, through June 30, 2007.

In a letter dated August 9, 2006, the taxpayer protested the penalty portion of the Notice of Deficiency Determination. The taxpayer requested an informal hearing via telephone, which was held on September 19, 2006.

The taxpayer operates [Redacted] in [Redacted] across the country, including Idaho. Idaho Code § 63-3623B imposes upon owners or operators of [Redacted] an annual permit fee in lieu of sales tax remitted from each [Redacted]'s revenue stream. Additionally, the statute imposes a \$50 penalty per device for the owner/operator's failure either to buy the permits or display the decals that are evidence the required fees have been paid. The code section is noted below, in relevant part:

**63-3623B. AMUSEMENT DEVICES. -- ....(b) In lieu of the imposition of sales tax upon the use of the amusement device, the owner or lessee or person having the right to impose a charge for use of the amusement device must pay an annual permit fee of thirty-five dollars (\$35.00) for each such device.**

(c) Upon payment of the permit fees, the state tax commission shall issue the permit(s) to the owner or lessee or person having the right to impose a charge for use of the amusement device.

**(d) All applications for a permit renewal must be made to the state tax commission on or before July 1 of each year.**

(e) The state tax commission shall adopt a uniform system of providing, affixing and displaying official decals, labels or other official indicia evidencing that the owner, lessee, or person having the right to impose a charge for the use of the amusement device has paid the annual permit fee for such amusement device.

(f) In addition to the penalties set forth above and in section 63-3634, Idaho Code, the state tax commission may assess the following penalties:

**(1) If any owner, lessee, or person having the right to impose a charge for the use of any coin, currency or token operated amusement device in this state shall violate any provision of this section or any rule promulgated under this section, the commission may assess penalties, of fifty dollars (\$50.00) for each device for failure to pay timely permit sticker fees.**

(g) The state tax commission shall impose the penalties provided in this section by a notice of deficiency determination in the manner provided in section 63-3629, Idaho Code, which shall be subject to review as provided in section 63-3631, Idaho Code.....(emphasis added)

In the letter of protest and during the telephonic hearing, the taxpayer explained why the company was late in [Redacted]. It was, according to the taxpayer, the result of a recent merger in which the location of personnel who had oversight responsibility for this activity changed and interfered with a traditionally well-functioning procedure. The taxpayer said "...we typically are very diligent with our licensing responsibilities." For the year under audit, the merged company purchased the required permits under the name of its merger partner. Hence, the Commission was unaware of the purchase at the time it asserted the Notice of Deficiency Determination. Having paid the permit fees, the taxpayer now asks the Tax Commission to abate the penalty.

In light of its claim of diligent compliance, the Commission reviewed the history of the taxpayer and learned the following. For the registration year ending June 30, 2005, the taxpayer bought [Redacted] only in response to audit findings. For 2006, the taxpayer ordered [Redacted] but upon subsequent audit was found to need five additional decals, which the taxpayer then bought. The taxpayer said it sent the original [Redacted] to its Idaho technician, but they were lost or misplaced. The Commission concludes that the taxpayer's oversight was insufficient and that the lost decals would not have been replaced if their absence had not been brought to the company's attention by an audit. The Commission did not impose a penalty in the prior two audit years.

As explained previously for the current audit year ending June 30, 2007, the taxpayer no longer bought decals under its name after the merger. The newly acquired company has presence in Idaho back to [Redacted] and bought several [Redacted] for the current registration year. Taxpayer records, undisputed by the Commission, show that the taxpayer sent out 15 [Redacted] in three separate letters to its representatives in various Idaho [Redacted] on July 10, 2006. However, the Commission imposed a \$250 penalty because five [Redacted] were found [Redacted] during the auditor's visit to the [Redacted] locations in early July of 2006.

In light of the compliance history reviewed above, the Commission upholds the Notice of Deficiency Determination and acknowledges that the taxpayer has paid for the required permits and the penalty.

WHEREFORE, the Notice of Deficiency Determinations dated July 18, 2006, is hereby APPROVED, AFFIRMED and MADE FINAL.

IT IS ORDERED and THIS DOES HEREBY ORDER that the petitioner pay the following penalty:

<u>TAX</u>	<u>PENALTY</u>	<u>TOTAL</u>
\$175	\$250	\$425
	PAYMENT	<u>(425)</u>
	TOTAL	\$ 0

An explanation of the taxpayer's right to appeal this decision is included with this decision.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

IDAHO STATE TAX COMMISSION

\_\_\_\_\_  
COMMISSIONER

**CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_, 2006, a copy of the within and foregoing DECISION was served by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[REDACTED]            Receipt No.  
[REDACTED]  
[REDACTED]